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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,431	06/27/2003	Michelle D. Castro	00-0122	7960
7590		05/11/2004		
Michelle D. Castro 11 Valley Avenue Locust Valley, NY 11560			EXAMINER SAKRAN, VICTOR N	
			ART UNIT 3677	PAPER NUMBER

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/609,431

Applicant(s)

CASTRO, MICHELLE D.

Examiner

VICTOR N SAKRAN

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 27 June 2003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The instant application contains a power of attorney to Ivar M. Kaardal who has been excluded from practice before the Patent and Trademark Office (Office). The Office does not communicate with attorneys or agents who have been suspended or excluded from practice. Accordingly, the Office action is being mailed to you as the inventor.

Applicant may, of course, file a new power of attorney in the application to have a registered attorney or agent represent you before the Office. In the absence of an attorney or agent of record, all amendments and other papers filed in the application must be signed: (1) by you; or (2) if there is an assignee of record of an undivided part interest, by you and such assignee; or (3) if there is an assignee of the entire interest, by such assignee; or (4) by a registered patent attorney or agent, not of record, who acts in a representative capacity under the provisions of 37 CFR 1.34(a). The Office will not hold telephone interviews with or send communications to a registered patent attorney or agent, acting in a representative capacity under 37 CFR 1.34, i.e., who is not of record in the application.

Applicant may obtain a list of registered patent attorneys and agents located in your area by consulting the USPTO web site, <http://www.uspto.gov>, or by calling the Office of Enrollment and Discipline at (703) 306-4097.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cartelli U. S. Patent No. 6,381,752; see Figures 6, 7; column 4, lines 8-19, and claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris U. S. Patent No. 5,590,545 in view of Cartelli U. S. Patent No. 6,381,752. Norris discloses Applicant's claimed combination of a strap retainer comprising a retaining member (11) having elongated main portion (17) and opposite end

portions for retaining said strap, wherein each of said end portions including prongs (29,37,33,41) extending outwardly from said elongated main portion defining a slot therebetween for releasably receiving said strap; see Figures 2, 3; column 3, lines 16-23 and 50-59, except for the particular use of the strap retainer for keeping straps of a bra on a user's back in proximate relationship to one another. Cartelli teaches the use of a bar strap retainer comprising a retaining member (60) having an elongated main portion and opposite end portions which are adapted to keep straps of a bra on a user's back in proximate relationship to one another; see Figures 6,7; column 4, lines 8-19, and claim 1. it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the strap retainer member in Norris for keeping straps of a bra on a user's back in proximate relationship to one another in the manner taught, disclosed and suggested by Cartelli, and/or vice versa by merely using the strap retainer (11) of Norris for the strap retainer (60) in Cartelli, especially, since such modification involves only routine skill in the art.

Furthermore, the particular use of a strap retainer for retaining a strap of a bra or other lingerie items is considered to be no more than a matter of design choice to one having ordinary skill in such art.

Claims 4-7, are rejected under 35 U.S.C. 103(a) as being unpatentable over the same references as applied to claims 1-3, above, and further in view of Wyeth U. S. Patent No. 1,401,227 who teaches the use of strap retainer (3) having an

elongated main portion (4) and opposite end portions (5), wherein each of said end portions includes C-shaped prongs (7), wherein said prongs of one end portion facing the other prongs of the other end portion; see Figures 1-3; page 1, lines 30-53, and to further modify the shape of the prongs in Norris in the manner taught, disclosed and suggested by Wyeth, it would have been obvious to one having ordinary skill in the art at the time the invention was made.

Furthermore, Applicant is reminded that in considering the disclosure of a reference, it is proper to take into account not only specific teaching of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom; see *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342,344 (CCPA1968).

Moreover, the particular shape of the various elements is considered to be no more than a matter of design choice obvious to one having ordinary skill within the art at the time the invention was made, especially, since it has been held that the particular change in shape of an element in a prior art device is such a change considered no more than an obvious matter of design choice to one having ordinary skill within in the art. See *In Re Dailey*, 357 F. 2d 669, 149 USPQ 47 (CCPA 1954).

Furthermore, the particular range of dimensions of the retaining member as recited in claim 7, are considered to be no more than an obvious matter of design choice; especially, since it has been held that where the general conditions of a

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claim are disclosed in the prior art, therefore, discovering the optimum or workable ranges is also involves only routine skill in the art. See *In Re Aller*, 105 USPQ 233.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant's attention is directed to the art cited herein, and of record, as showing structure related to Applicant's disclosed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR N SAKRAN whose telephone number is 703-308-2224. The examiner can normally be reached on 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. swann can be reached on 703-308-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

**Patent Application Information Retrieval (PAIR) system. Status**  
information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 28, 2004

  
VICTOR N SAKRAN  
Primary Examiner  
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